

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

V.

MICHAEL WHITMORE

CRIMINAL NO. 04-10090-WGY

**ASSENTED -TO MOTION TO CONTINUE  
SUPPRESSION HEARING DUE TO UNAVAILABILITY OF WITNESS**

The United States, with the assent of the defendant, hereby moves the Court to continue until a date after September 6, 2004 the hearing on the defendant's motion to suppress, which hearing is scheduled to be held on July 22, 2004. As grounds, the government states that the key witness is currently unavailable. More specifically, the government states as follows:

1. In his motion to suppress, the defendant challenges the propriety of a traffic stop and, therefore, of the seizure of evidence during the stop. The stop was effected by a Brian Smigielski, a Boston police officer who, aside from the defendant, was the only witness to the stop and events leading up to it.

2. Officer Smigielski was recently involved in an incident that culminated in the fatal shooting of a suspect. The officer was injured during the incident. He has been on administrative leave since the incident.

3. Despite repeated attempts, undersigned counsel has been unable to reach Officer Smigielski. The government has served a subpoena on the Boston Police Department. According to Boston Police Department supervisory personnel, the officer is not able to appear in response to the subpoena.

4. Undersigned counsel has conferred with defense counsel with regard to this motion.

Defense counsel assents to the relief sought herein. Moreover, the parties agree that the motion to suppress will be dispositive of the case. That is, in the event the Court denies the motion, the defendant will enter a plea of guilty; in the event the Court allows the motion, the government will seek an immediate appeal.

Wherefore, the government requests that the Court continue until a date after September 6, 2004

the hearing on the defendant's motion to suppress.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ John A. Capin

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JOHN A. CAPIN  
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CERTIFICATE OF SERVICE

I, John A. Capin, Assistant U.S. Attorney, do hereby certify that I have, on July 20, 2004, caused a true and accurate copy of the foregoing to be served upon counsel for the defendant by filing the document with the Court electronically or, if counsel for the defendant is not registered with the Court's electronic filing system, by first-class mail, postage prepaid.

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JOHN A. CAPIN  
Assistant U.S. Attorney